

BEFORE THE SURFACE TRANSPORTATION BOARD

---

DOCKET NO. AB-878

---

CITY OF PEORIA, ILLINOIS AND VILLAGE OF PEORIA HEIGHTS, ILLINOIS

ADVERSE DISCONTINUANCE  
PIONEER INDUSTRIAL RAILWAY CO.

---

REQUEST FOR MEDIATION

Daniel A. LaKemper, Esq.  
General Counsel  
Pioneer Industrial Railway Co.  
1318 S. Johanson Road  
Peoria, Illinois 61607  
Tel.: (309) 697-1400  
Fax: (309) 697-8486

Dated: May 20, 2005.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-878

ADVERSE DISCONTINUANCE  
PIONEER INDUSTRIAL RAILWAY CO.

REQUEST FOR MEDIATION

On May 14, 2005, Pioneer Industrial Railway Co. (“PIRY”) sent a letter to the City of Peoria (an Applicant in this proceeding) requesting that the City voluntarily withdraw this Petition in light of recent developments concerning the City’s alleged “replacement” operator.

On May 18, 2005, City attorney Randall Ray responded by letter,<sup>1</sup> wherein the City concedes its has doubts about the ability of Central Illinois Railroad Company to fulfill its common carrier obligations. Attorney Ray states, “We are *in the process of investigating* whether that Company will be able to perform in light of the circumstances [emphasis supplied]”.

Attorney Ray goes on to reaffirm the “It remains the goal of the City of Peoria to discontinue your Company’s [PIRY’s] service on the Kellar Branch and to provide service from the West, *thereby allowing most of the Kellar Branch to be railbanked* [emphasis supplied].” Of course, “railbanked” is a misnomer. Attorney Ray means abandoned and converted into a trail.

---

<sup>1</sup> Letter attached hereto as Exhibit 1.

On the same day, PIRY is informed and believes that Attorney Ray sent a letter to CIRY<sup>2</sup> stating that “we feel compelled to request in writing that you advise us as to your intentions concerning complying with all contractual terms with the City of Peoria and performing on your contracts.”

On May 19, 2005, City attorney Ray was quoted in the Peoria *Journal Star* (the city’s only daily newspaper) as saying the DOT Rail/CIRY situation is “certainly a matter of concern” and that “We’re checking their ability to fulfill their contracts.” Obviously, the City itself has considerable doubt about CIRY’s ability to perform its common carrier obligations, should PIRY be forced to discontinue service.<sup>3</sup>

What’s more, that same article discloses that, according to the LsSalle County State’s Attorney, there is a sale pending of DOT Rail (including its CIRY subsidiary). City attorney Ray then admits that he was aware of the “imminent” sale, but refused to disclose the buyer. Obviously, acquisition of a carrier may require a Board filing, which has not been done. And what is the ability or intentions of the buyer, whomever he/she is? It would appear that the ability, ownership, and indeed identity of the alleged “replacement” operator, is, at best, uncertain.

What is not uncertain is the intention of this Petition. The newspaper article’s sub-headline, of course, refers to “Key figure in rails-to-trails project” and the article begins with a reference to the “decade-long attempt to convert Kellar Branch track to a hiking path.” Is there any doubt that CIRY has no intention of providing common carrier service on the Kellar Branch? Is there any doubt that the City’s motivation in filing this Petition was to remove the carrier that takes its common carrier obligations seriously and “replace” that carrier with one that will permit them to scrap most of the

---

2 Letter attached hereto as Exhibit 2.

3 The article is attached hereto as Exhibit 3.

Kellar Branch without Board authority and convert it into a trail, regardless of the impact on shippers?

PIRY has proven its ability and commitment to provide service to the shippers. Attached is a letter from one of the shippers,<sup>4</sup> which categorically confirms that “Rail service does remain critical to our business and yes, we have been very satisfied with the service your Company [PIRY] has provided to us.” It is, according to the shipper, “absolutely essential”.

This letter confirms that the majority of the shipper’s traffic arrives via CN, “with some shipments coming via the BNSF, and we do not expect that to change in the foreseeable future.” The “goal of the City” is, of course, to sever this shipper’s direct access to both CN and BNSF, as well as NS, TPW, IAIS, IMRR and KJRY (the line haul carriers, in addition to UP, that the TZPR provides a terminal switch for).

The shipper also expresses considerable uncertainty and misgivings regarding the proposed interchange with Union Pacific, and, finally, states that they do not oppose joint rail-trail use of the Kellar Branch. The shipper’s “main concern,” of course, “is that we retain viable and affordable rail service for our company.”

PIRY urges the Board not to allow potential shippers to lose their rail option forever, and not to put the fate of the remaining shippers in the hands of an unknown carrier, committed to abandoning over three-quarters of the line, and one that has no real plan to prevent the deterioration of service and increases in rates that will almost certainly accompany the loss of competitive access.

There is an alternative that will still allow the City to have its trail. While PIRY would prefer not to share its right of way with a trail, PIRY remains willing to do so, and believes that, in this particular case, it is feasible. Such an arrangement would be far preferable to abandonment.

PIRY therefore respectfully requests that the Board designate a mediator in this proceeding, and that the possibility of joint use be explored, as a way to allow the shippers and potential shippers on this line to retain competitive service.

PIRY stands ready to participate in such discussions at the call of the Board.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel A. LaKemper". The signature is fluid and cursive, with the first name "Daniel" and last name "LaKemper" clearly distinguishable.

Daniel A. LaKemper, Esq.  
General Counsel  
Pioneer Industrial Railway Co.  
Peoria, Illinois 61607  
Tel.: (309) 697-1400

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument was served on May 20, 2005, by e-mail on:

Thomas F. McFarland  
[Mcfarland@aol.com](mailto:Mcfarland@aol.com)

And by United States Mail, first class, postage fully pre-paid, on May 20, 2005 upon:

Thomas F. McFarland  
Thomas F. McFarland, P.C.  
208 S. LaSalle St., Suite 1890  
Chicago, Illinois 60604



Daniel A. LaKemper, Esq.  
General Counsel  
Pioneer Industrial Railway Co.  
Peoria, Illinois 61607  
Tel.: (309) 697-1400

## **VERIFICATION**

I, J. Michael Carr, CFO of Pioneer Industrial Railway Co., declare under the penalty of perjury that to the best of my knowledge the foregoing is true and correct. Further, I certify that I am qualified to file this Verified Statement. Executed this 20<sup>th</sup> day of May, 2005.

/s/ J. Michael Carr

## EXHIBIT 1



OFFICE OF THE CORPORATION COUNSEL



May 18, 2005

Pioneer Industrial Railway Co.  
Att: J. Michael Carr, CEO  
1318 S. Johanson Road  
Peoria IL 61607

Re: STB No. AB-878

Dear Mr. Carr:

Thank you for your letter of May 16, 2005. Our contracts are with DOT Rail and Central Illinois Railroad Company and not with Don Gibson. We are in the process of investigating whether that Company will be able to perform in light of the circumstances which you cite in your letter of May 16. It remains the goal of the City of Peoria to discontinue your Company's service on the Kellar Branch and to provide service from the West, thereby allowing most of the Kellar Branch to be railbanked.

Thank you for your interest and we will keep it in mind should circumstances change and a replacement Request for Proposals become necessary.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Randall Ray'.

Randall Ray  
Corporation Counsel

/kcs



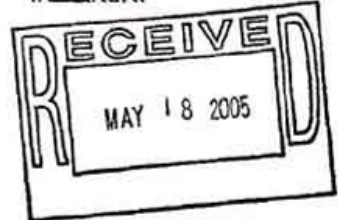
City Hall Building  
419 Fulton Street  
Peoria, Illinois 61602-1270  
(309) 494-8590  
FAX (309) 494-8559  
E-MAIL: legal@ci.peoria.il.us

## EXHIBIT 2

OFFICE OF THE CORPORATION COUNSEL

May 18, 2005

Central Illinois Railroad Company  
c/o DOT Rail Service, Inc.  
P.O. Box 259  
Granville, IL 61326



F  
5/18/05  
CW

Re: City of Peoria—Central Illinois Railroad Co. and DOT Contracts

Ladies and Gentlemen:

This letter is prompted by the article which appeared in the *Peoria Journal Star* on May 14, 2005, concerning your Vice President, Don Gibson. We do understand that your representative called Steve Van Winkle, our Director of Public Works, on Monday, May 16 to indicate that there was continued interest in performing on your contracts with the City of Peoria. While we appreciate that phone call, we feel compelled to request in writing that you advise us as to your intentions concerning complying with all contractual terms with the City of Peoria and performing on your contracts. We look forward to hearing from you and also look forward to some understanding of how your Company proposes to continue to do business.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Randall Ray'.

Randall Ray  
Corporation Counsel

/kcs



City Hall Building  
419 Fulton Street  
Peoria, Illinois 61602-1270  
(309) 494-8590  
FAX (309) 494-8559  
E-MAIL [legal@ci.peoria.il.us](mailto:legal@ci.peoria.il.us)

## EXHIBIT 3

IN TOUCH

► CITY DESK 686-3114  
► STATE DESK 686-3153  
E-mail: news@jstar.com

# Local & State

SECTION B

THURSDAY  
MAY 19, 2005  
JOURNAL STAR

## Police arrest DOT Rail co-owner

Key figure in rails-to-trails project  
accused of soliciting  
hit man to kill girlfriend

BY MATT BUEDEL  
OF THE JOURNAL STAR

PEORIA — The rails-to-trails project has added an alleged murder-for-hire plot to its decade-long attempt to convert Kellar Branch track to a hiking path.

Donny Lee Gibson, 65, co-owner of DOT Rail Service Inc. in Granville, has been accused of soliciting a hit man to kill a woman who threatened to expose their relationship to his wife. He's being held in the LaSalle County Jail on \$5 million bond.



DONNY LEE  
GIBSON

Gibson's company has signed two agreements with the city of Peoria since 2001 to operate the Kellar Branch line until it is removed and run the new industrial spur that will replace the track.

"It's certainly a matter of concern," city attorney Randy Ray said Wednesday. "We're checking their ability to fulfill their contracts."

The terms of DOT Rail's contracts with the city would not go into effect unless the federal Surface Transportation Board rules that Pioneer Railcorp can no longer use the rail. While waiting for that ruling to be handed down, the city has progressed

with construction of the industrial spur.

A DOT Rail representative sent a letter to the city Wednesday afternoon assuring that it could complete its contracted tasks, and the extension of the Rock Island Trail from near Pioneer Parkway to the riverfront would not be impacted if that is the case, Ray said.

The city has been battling Pioneer Railcorp since last summer to forcibly remove that company's train cars from the Kellar Branch, claiming Pioneer has been using the track illegally since its contract with the city, which owns the rail, expired last July.

The city has petitioned the Surface Transportation Board, which has exclusive domain over all railroads, for an "adverse discontinuance," which would

Please see **RAIL**, Page B2

### RAIL

Continued from Page B1

eliminate Pioneer Railcorp's authority over the track and transfer the authority to Gibson's company.

As part of LaSalle County State's Attorney Joe Hettel's investigation into the murder solicitation, however, it was disclosed that a sale of DOT Rail was pending for \$8.5 million.

"Through an interview with his wife (Paula Gibson, the principle owner of DOT Rail), we found out it was for sale," Hettel said Wednesday. "I don't know what effect his arrest would have" on that transaction.

Hettel added that if Gibson posts bail, the conditions of his bond don't prohibit him from conducting business, but he would be barred from

direct contact with his wife, who requested that measure of protection.

Ray said he was aware of the imminent sale of DOT Rail and that the potential buyer, who he declined to name, was not Guy Brenkman, chairman of Pioneer Railcorp.

When asked what effect the purchase of DOT Rail would have on the rails-to-trails project, Ray said, "If DOT, under their new owners, is ready to come in and perform, we hope none at all."

## EXHIBIT 4





## CARVER LUMBER

8700 N. UNIVERSITY AVE.  
PEORIA, ILLINOIS 61615  
(309) 692-2000 • FAX (309) 693-7919

May 19, 2005

Mr. J. Michael Carr, CFO  
Pioneer Industrial Railway Co.  
1318 S. Johanson Road  
Peoria, IL. 61607


Dear Mr. Carr:

I am in receipt of your letter dated May 18, 2005, in which you have asked me to respond to certain statements.

- 1) Rail service does remain critical to our business and yes, we have been very satisfied with the service your company has provided us.
- 2) As you have stated, the majority of our car traffic does arrive via the CN railroad with some shipments coming via the BNSF, and we do not expect that to change in the foreseeable future.
- 3) I cannot speak with any authority about plans to construct a "J" instead of a "Y" at what is known as the "Pioneer Junction", as I have not yet had an opportunity to speak with anyone at City Hall about this. I do believe you are correct in your claim that having no "Y" will limit our ability to interchange from both directions. As I understand it, such an arrangement would necessitate incoming cars from the North to bypass the junction in favor of being taken somewhere near downtown Peoria. At that point, cars would be switched out and transferred to an available Northbound UP train in order to achieve interchange at the Pioneer Junction. And yes, it is logical to assume that such an arrangement would delay delivery of product to our business beyond what was anticipated by having a full "Y". Even if there were no direct cost consequences as a result of the double handling, such delays in service could never be seen as something positive for our business. If it's true that the City plans to construct only one half of the "Y", even if only temporarily, I hope they will reconsider.
- 4) As we have stated several times in the past, our company has never been opposed to a joint rail-trail use of the Kellar Branch right-of-way. While we have stated openly that our company does not object to converting the Kellar line completely to a trail, it has always been with the understanding that rail service to our company would not be compromised as a result.

In closing, our main concern is that we retain viable and affordable rail service for our company. It's absolutely essential in order to keep us competitive. We hope that in the end, we will be able to continue enjoying the good service we have had these past many years.

Sincerely,

  
Rob Happach  
President